

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 DONALD DOUGLAS BONE,) No. C 09-0700 MMC (PR)
11 Plaintiff,) **ORDER OF DISMISSAL; DENYING**
12 v.) **MOTION FOR LEAVE TO SUBMIT**
13 CALIFORNIA DEPARTMENT OF) **NEW EVIDENCE**
14 CORRECTIONS &)
15 REHABILITATION; WARDEN)
16 JOHN MARSHAL, CALIFORNIA)
MEN'S COLONY,)
Defendants.)

17 On February 27, 2008, plaintiff, a California prisoner then incarcerated at the
18 California Men's Colony ("CMC") in San Luis Obispo, California, and proceeding pro se,
19 filed in this court a civil rights action pursuant to 42 U.S.C. § 1983. See Bone v. California
20 Department of Corrections & Rehabilitation, C 08-1156 MMC (PR). On review of the
21 complaint, the Court determined plaintiff was attempting to challenge his impending transfer
22 to an out-of-state prison. As plaintiff claimed the Director of the California Department of
23 Corrections & Rehabilitation ("CDCR") in Sacramento had prevailing authority with respect
24 to where plaintiff would be transferred, and had in the past ordered plaintiff transferred from
25 one institution to another, the Court, by order filed August 27, 2008, ordered the action
26 transferred to the United States District Court for the Eastern District of California. See 28
27 U.S.C. § 84(b).

28 Thereafter, by order filed September 11, 2008, the case was transferred from the

1 Eastern District to the United States District Court for the Central District of California,
2 based on plaintiff's allegations that he was not receiving adequate dental care at CMC, which
3 is located within the venue of the Central District of California. See 28 U.S.C. § 84(c).
4 Subsequently, on December 16, 2008, plaintiff, who by then had been transferred to a
5 correctional institution in Tutwiler, Mississippi, filed a first amended complaint ("FAC"), in
6 which he objected to his transfer and also claimed that in 2007 he had been denied timely
7 dental care while incarcerated at the Correctional Training Facility ("CTF") at Soledad.
8 (Docket No. 22.)

9 On review of the FAC, a district judge of the Central District, by order filed
10 February 5, 2009, dismissed plaintiff's involuntary transfer claim, finding such allegations
11 fail to state a federal claim for relief. Additionally, that court found plaintiff's claim alleging
12 inadequate dental care at CTF was not properly brought in the Central District, for the reason
13 that such claim arose in Monterey County, which is located within the venue of the Northern
14 District of California. See 28 U.S.C. § 84(a). Accordingly, plaintiff's case was transferred
15 back to this district, where the above-titled civil rights action was opened on February 19,
16 2009.

17 A federal court must conduct a preliminary screening in any case in which a prisoner
18 seeks redress from a governmental entity or officer or employee of a governmental entity.
19 See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and
20 dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may
21 be granted or seek monetary relief from a defendant who is immune from such relief. See id.
22 § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally construed. See *Balistreri v.*
23 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C.
24 § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the
25 Constitution or laws of the United States was violated, and (2) that the alleged violation was
26 committed by a person acting under the color of state law. See *West v. Atkins*, 487 U.S. 42,
27 48 (1988).

28 In the FAC, plaintiff alleges that in 2007, when he was incarcerated at CTF, he was

1 denied emergency dental care for an abscessed tooth.¹ While plaintiff objects to the
2 adequacy of the dental care he received at CTF in 2007, he expressly states in the FAC that
3 he is not seeking monetary damages. (FAC, Statement of Claims at 2.) Rather, his only
4 request is for injunctive relief in the form of root canal treatment. (FAC, Civil Rights
5 Complaint Form at 6; Statement of Claims at 5.)

6 Plaintiff's claim for injunctive relief is subject to dismissal as moot. A claim is
7 considered moot if it has lost its character as a present, live controversy, and if no effective
8 relief can be granted due to subsequent developments. See Flast v. Cohen, 392 U.S. 83, 95
9 (1968). Where injunctive relief is involved, questions of mootness are determined in light of
10 the present circumstances. See Mitchell v. Dupnik, 75 F.3d 517, 528 (9th Cir. 1996). A
11 claim for injunctive relief should be dismissed as moot when an inmate is released from
12 prison or transferred to another prison and there is no reasonable expectation nor
13 demonstrated probability that he will again be subjected to the prison conditions for which he
14 seeks injunctive relief. See Dilley v. Gunn, 64 F.3d 1365, 1368-69 (9th Cir. 1995).

15 Here, plaintiff was last incarcerated at CTF in 2007. He currently is incarcerated at
16 the Tallahatchie County Correctional Facility in Mississippi. Consequently, as the sole relief
17 sought is injunctive in nature, and he no longer is incarcerated at CTF or any other prison
18 within this Court's jurisdiction, the complaint will be dismissed as moot. Additionally,
19 plaintiff's "Motion to Submit New Evidence," in which he complains of alleged unlawful
20 conduct by prison officials at the Tallahatchie County Correctional Facility, will be denied.
21 Any federal constitutional claims plaintiff seeks to bring against prison officials at the
22 Tallahatchie County Correctional Facility must be filed in the United States District Court for
23 the Northern District of Mississippi. See 28 U.S.C. § 104(a).

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27 ¹Plaintiff made the same allegations in another federal civil rights action, which action
28 was dismissed on January 2, 2008 due to plaintiff's failure to exhaust administrative
remedies. See Bone v. California Department of Corrections and Rehabilitation, C 07-3314
MMC (PR).

CONCLUSION

For the foregoing reasons, the complaint is hereby DISMISSED with prejudice as moot, and plaintiff's "Motion to Submit New Evidence" is hereby DENIED.

This order terminates Docket No. 29.

The Clerk shall close the file.

IT IS SO ORDERED.

DATED: June 15, 2009

Maxine M. Chesney
MAXINE M. CHESNEY
United States District Judge